

SECTION 7G – OPEN SPACE DESIGN

SECTION 1. PURPOSE AND APPLICABILITY

a. Purpose: The primary purpose of this Section is to preserve the natural resources of New Salem as identified in the community development plan, especially large contiguous blocks of forested back-land that must be maintained as large-acreage holdings in order to remain economically viable for commercial forestry. This is necessary for the continuation of forestry as a significant resource-based local agricultural activity and for the protection of the Town's water resources and other unique environmental assets. This section is also intended to foster compact development patterns using flexible regulations for density and lot dimensions and to promote and encourage creativity in neighborhood design. The Town wishes to encourage the use of Open Space Design because it results in the preservation of contiguous open space and important environmental resources, while allowing design flexibility. Open Space Design reduces development impacts on farmland, forests, wildlife habitats, large tracts of contiguous open space, environmentally sensitive areas, steep slopes, hilltops, and historically significant areas.

b. Applicability: To encourage this type of development, Open Space Design projects are allowed by-right, subject only to the requirements of this section and the Subdivision Rules and Regulations (Subdivision Regulations). An Open Space Design (also referred to herein as a "project") may be proposed anywhere in New Salem. All subdivisions shall comply with the Open Space Design provisions of this Section 7G, unless the Planning Board allows a development that deviates from the requirements herein by special permit. Such deviations may be approved if the applicant demonstrates that the proposed alternative development configuration provides adequate protection of the site's environmental resources and fulfills the purposes of this section as well as or better than an Open Space Design. If the Planning Board determines that the land with the greatest conservation value cannot be protected except by the use of an Open Space Design plan, the Planning Board shall deny the special permit for the deviation and require that the applicant submit a plan that complies with the requirements for an Open Space Design.

c. Non-Subdivision Applications: An Open Space Design that does not require approval as a subdivision is allowed by right under this section, but first subject to site plan review by the Planning Board under Section 11A of this zoning bylaw. In order to encourage small projects to follow Open Space Design principles, there is no minimum parcel size or number of lots required for an Open Space Design.

d. Consolidated Special Permits: If the proposed Open Space Design also involves proposed deviations, one or more common driveways, density bonuses, transfer of development rights, and/or any other use that requires a special permit, the proceedings for all such special permits shall, insofar as practicable, occur in one consolidated special permit proceeding before the Planning Board.

e. Exemptions: The provisions of 1(b), above apply only to subdivisions of land as defined in Section 81L of Chapter 41 of the General Laws, and not to construction of homes or businesses on individual lots existing as such prior to May 9, 2011 or to lots created at any time through the “Approval Not Required” process described in Section V of the Subdivision Regulations with frontage on public ways existing as such as of May 9, 2011.

SECTION 2. DEVELOPMENT IMPACT STATEMENT AND CONSERVATION ANALYSIS

a. In order to enable the Planning Board to determine whether or not a proposed Open Space Design (or development by special permit that deviates from the requirements for Open Space Design) satisfies the purposes and standards of this section, an applicant must present sufficient information on the environmental and open space resources for the Planning Board to make such determination. The required information shall be provided in the form of a Development Impact Statement, including a “conservation analysis” as described in Section XII(F) of the Subdivision Regulations. In the case of an Open Space Design that is not a subdivision, and that is presented as a site plan review application, the applicant shall not be required to submit a full Development Impact Statement; however, the Planning Board may require the submission of all or part of a conservation analysis as described in said Section XII(F) of the Subdivision Regulations.

b. Prior to filing an application, an applicant is encouraged to meet with the Planning Board to discuss the conservation resources on the site. At such a meeting, the Planning Board shall indicate to the applicant which land is likely to have the most conservation value and be most important to preserve and where development may be most appropriately located.

c. The Planning Board, in consultation with the Conservation Commission and Open Space Committee, if any, shall study the conservation analysis, may conduct field visits, and shall formally determine which land should be preserved and where development may be located. The Planning Board shall make written findings supporting this determination (the “conservation findings”). The Planning Board may deny any application that does not include sufficient information to make conservation findings or that does not preserve land that the Planning Board determines should be preserved from development as a result of the conservation analysis and findings.

d. The Planning Board’s conservation findings shall be incorporated into its decision to approve, approve with conditions, or deny an application. The conservation findings shall describe the land to be permanently preserved by a conservation restriction or other means, any structures, uses, or activities reserved from the terms of the conservation restriction, and management guidelines for such land, if appropriate. The conservation findings shall also indicate preferred locations for development if the Open Space Design is denied based upon such findings.

SECTION 3. MINIMUM PRESERVED OPEN SPACE

The Plan shall show that at least 80% of the total acreage of the project will be preserved by a conservation restriction or other means, the configuration of which shall be based upon the conservation findings.

SECTION 4. ALLOWABLE RESIDENTIAL UNITS

a. The maximum number of residential units in an Open Space Design is calculated by a formula based upon the net acreage of the project. This formula is intended to take into account site-specific development limitations that make some land less developable than other land. This calculation involves two steps, calculating the net acreage and dividing by the base density.

b. Net Acreage Calculation

(1) The factors named below are included in this subsection for net acreage calculation purposes only and do not convey or imply any regulatory constraints on development siting that are not contained in other applicable provisions of law, including this zoning bylaw. To determine net acreage, subtract from the gross acreage of the project the total acreage of:

(i) one-half of land with slopes of 20% or greater (2000 square feet or more of contiguous sloped area at least 10 feet in width);

(ii) all lakes and ponds, areas within 200 feet of a surface water or tributary to the Quabbin Reservoir that are subject to the Watershed Protection Act Regulations (350 CMR 11.00), and land subject to easements or restrictions prohibiting development;

(iii) all FEMA 100-year floodplains; and

(iv) all freshwater wetlands as defined in Section 40 of Chapter 131 of the General Laws, as delineated by an accredited wetlands specialist and approved by the New Salem Conservation Commission.

(2) Applicants shall use the Field Data Form found in Appendix G of the Massachusetts DEP Handbook “Delineating Bordering Vegetated Wetlands Under the Massachusetts Wetlands Protection Act” (1995). The complete form shall be submitted including all methods of determination, i.e., vegetation, soil, and any other indicators, as provided for on the form. If detailed vegetative assessments are not required by the Handbook for a particular site, the reasons must be noted on the Field Data Form. At the Planning Board’s discretion, any of the information described above may be taken from current geographic information systems data available from the

Massachusetts Department of Environmental Protection, Mass GIS, and other credible sources including delineations registered by the use of global positioning systems.

c. Unit Count Calculation

To determine the base number of allowable residential dwelling units on the site, divide the net acreage by the base density divisor of 5. Fractional units of less than 0.5 shall be rounded down and 0.5 or more shall be rounded up.

d. Density Bonuses

(1) The unit count determined in 4(c), may be increased through density bonuses designed to advance important goals of the New Salem community development plan. Density bonuses are given by special permit at the discretion of the Planning Board based upon the expected public benefit. They are calculated by first determining the allowable unit count under 4(c) without rounding fractional units up or down, and then multiplying that number by 100% plus the percentages that follow. The resulting fractional units, if any, shall be rounded up or down as in 4(c).

(2) If the applicant allows deeded public access to the open space portion of the property and the Planning Board finds that such public access provides a significant recreational benefit to the Town (such as access to an important natural area or a trail system): a maximum of 10% over the allowable unit count in 4(c).

(3) If the applicant permanently restricts ownership and occupancy of units allowed by 4(c) as affordable housing, herein defined as housing units that are eligible for inclusion in the Town's "Subsidized Housing Inventory" for the purposes of Chapter 40B of the General Laws, and makes a binding commitment to construct such affordable residences: a maximum of 25%. For every unit included in the allowable unit count under 4(c) that is built and dedicated as an affordable unit, two bonus market rate units may be permitted, up to the maximum of 25% over the allowable unit count in 4(c).

(4) If the applicant preserves as permanent open space more than the minimum required percentage: a maximum 10% over the allowable unit count in 4(c) per additional 5% of the parcel preserved as open space.

e. Density Transfer (Transfer of Development Rights)

(1) Procedure: The Town of New Salem encourages flexibility in the location and layout of development, within the overall density standards of this Zoning Bylaw. The Town therefore will permit residential density to be transferred from one parcel (the "sending parcel") to another (the "receiving parcel") which

shall be an Open Space Design project under this Section 7G only. The process of density transfer is as follows:

- (i) All density transfers require a special permit from the Planning Board.
- (ii) The special permit application for a density transfer shall be signed by the owners (or their authorized representatives) of both the sending and receiving parcels.
- (iii) The special permit application shall show a proposed Open Space Design plan for the receiving parcel (subdivision or site plan) as well as a base unit count calculation prepared according to the provisions of 4(c). For the sending parcel, the applicant may calculate the allowable number of units eligible to transfer by either:
 - (a) calculating the net acreage pursuant to 4(b) and dividing by 15; or
 - (b) dividing the total (gross) project area by 25.
- (iv) Fractional units of less than 0.5 shall be rounded down and 0.5 or more shall be rounded up.
- (v) Sending parcels existing as such on [Date of Passage] may have development rights calculated by either method iii (a) or (b), above at the applicant's election. Sending parcels which have been modified by lot line changes since [Date of Passage] must employ method iii (a). The density calculation for the sending parcel shall not include any of the density bonuses available under Subsection 4(d), above.
- (vi) In reviewing an application for density transfer, the Planning Board shall first determine the base number of allowable residential units permitted on the receiving parcel using all of the relevant standards in 5(c) and any density bonuses sought under 5(d). The Planning Board shall then determine the number of residential units available to transfer from the sending parcel(s) pursuant to (iii) (a) or (b), above.
- (vii) The Planning Board may then grant a special permit allowing the transfer to the receiving parcel of some or all of the allowable residential units from the sending parcel(s).
- (viii) As a condition of approval of the density transfer, a conservation restriction on the sending parcel(s) satisfying the requirements of Section 7, below shall be executed and recorded in the Registry of Deeds. The conservation restriction shall require that the total area of land used in the calculation required under (iii) (a) or (b), above be permanently restricted. (For example, if development rights to build five units are transferred and

the calculation is according to (iii) (b), above at least 125 acres of the sending parcel must be permanently restricted.). Those portions of the sending parcel(s) not required to be subject to the conservation restriction may be used in accordance with this zoning bylaw.

(2) Findings Required

The Planning Board shall not approve any residential density transfer unless it finds all of the following.

- (i) All requirements for the granting of a special permit have been satisfied.
- (ii) The addition of the transferred units to the receiving parcel will not increase the maximum allowable unit count under 4(c) by more than 25%, and will not adversely affect the area surrounding the receiving parcel.
- (iii) The density transfer will benefit the Town by protecting a substantial area of developable land with conservation value on the sending parcel(s) in a manner that furthers the purposes of this section.
- (iv) The density transfer will be consistent with the community development plan.

f. Maximum Density Bonus and/or Density Transfer

The density bonuses and transfers of development rights allowed in 4(d) and 4(e), above may be combined to result in a total increase not exceeding 25% of the unit count established in 4(c). Density bonuses and/or transfers may only be exercised if the resulting development complies with Title 5 of the State Environmental Code as determined by the Board of Health.

SECTION 5. TYPES OF RESIDENTIAL DEVELOPMENT

The allowable residential dwelling units may be developed as single-family, or any other housing types otherwise allowed by this zoning by-law, provided that all applicable requirements for the land use district are satisfied and that the number of dwelling units does not exceed the allowable unit count in 4(f). The subdivision approval and approvals for any other allowed housing types proposed shall be fulfilled concurrently in one proceeding to the extent practical. Accessory apartments shall be permitted in Open Space Designs, and shall not be counted toward the total allowable unit count. Such apartments shall comply with the requirements of Section 5B(3) of this zoning bylaw.

SECTION 6. DIMENSIONAL AND DESIGN REQUIREMENTS

a. Minimum Lot Sizes in Open Space Designs

The limiting factor on lot size in Open Space Designs is the need for adequate water supply and sewage disposal. Therefore, there is no required minimum lot size for zoning purposes. This does not affect the powers of the Board of Health to require areas on a lot for the disposal of sewage and the protection of water supply.

b. Setbacks, Road Frontage, and Road Requirements

There shall be no setback requirements, except the minimum building setback shall be 10 feet from any property line. In the case of adjoining property that is not a part of the Open Space Design, the setback requirements from such property lines shall be as otherwise required in this zoning by-law. There shall be no numerical requirements for road frontage in an Open Space Design, provided that each lot has legally and practically adequate vehicular access to a public way or a way approved under the Subdivision Regulations across either its own frontage or via a shared driveway approved under Section 5B of this zoning bylaw. All dwellings must comply with applicable Board of Health requirements. The Planning Board may modify the applicable road construction requirements for new roads within an Open Space Design as provided in the Subdivision Regulations, if it finds that such modifications will be consistent with the purposes of this Section 7G and the community development plan.

c. Arrangement of Lots

(1) Lots shall be located and arranged in a manner that protects: views from roads and other publicly accessible points; farmland; wildlife habitat; large harvestable forest areas; hilltops; ponds; steep slopes; and other sensitive environmental resources, while facilitating pedestrian circulation. Generally, residential lots shall be located the minimum feasible distance from existing public roadways while allowing for adequate visual screening from such roadways. The Planning Board shall take into consideration the conservation analysis and findings in approving the arrangement of lots.

(2) Lot, roadway, and shared driveway layouts, land alterations, and placement of structures shall follow applicable portions of the Rural Siting Principles in Section 7H of this zoning bylaw and any design guidelines for Open Space Design which may be adopted by the Planning Board.

SECTION 7. PERMANENT OPEN SPACE

a. Open space set aside in an Open Space Design or as a condition of any special

permit or site plan review shall be permanently preserved from development. The Planning Board may not require such open space land to be accessible to the public unless a density bonus is allowed under 4(d)(2). Any development permitted in connection with the setting aside of open space land shall not compromise the conservation value of such land, based upon the conservation findings of the Planning Board. Individual or shared water wells may be located upon the open space land if so allowed in the conservation findings of the Planning Board.

b. Permanent Preservation of Open Space Land

All land required to be set aside as open space in connection with any Open Space Design shall be so noted on any approved plans and shall be protected by a permanent Conservation Restriction, herein defined as a permanent restriction in the title to land of the type described in G.L. Chapter 184, Sections 31–33, to be held by the Town of New Salem Conservation Commission, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold conservation restrictions under Chapter 184, Section 31 of the General laws, and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code. As used in this zoning bylaw “Conservation Restriction” also includes an Agricultural Preservation Restriction, a Watershed Preservation Restriction, or a Preservation Restriction as defined in G.L. Chapter 184, Section 31. The restriction shall specify the permitted uses of the restricted land which may otherwise constitute development. The restriction may permit, but the Planning Board may not require public access or access by residents of the development to the protected open space land.

c. Ownership of Open Space Land

(1) The fee interest in the protected open space land, at the applicant’s discretion, may be held: in private ownership; common ownership by a homeowner’s association (HOA); by the town or state governments with their consent; by a non-profit organization; or in such other form of ownership as the Planning Board finds appropriate to manage the open space land and protect its conservation value.

(2) If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

(i) The HOA must be created before final approval of the development, and must comply with all applicable provisions of state law.

(ii) Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

(iii) The HOA must be responsible for liability insurance, property taxes, the maintenance of recreational and other facilities, private roads, and any shared driveways used by all members.

(iv) Property owners must pay their pro rata share of the costs in (2) (ii) and (iii), above, and the assessment levied by the HOA must be able to become a lien on the property.

(v) The HOA must be able to adjust the assessment to meet changed needs.

(vi) The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Select Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.

(vii) Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the dwelling units they each own.

(viii) Town Counsel shall find that the HOA documents presented satisfy the conditions in (2) (i-vii), above, and such other conditions as the Planning Board shall deem necessary.

d. Maintenance Standards

(1) Ongoing maintenance standards shall be established as a condition of development approval to ensure that the open space land is not used for storage or dumping of refuse, junk, or other offensive or hazardous materials. Such standards shall be enforceable by the Town against any owner of open space land, including an HOA.

(2) If the Select Board finds that the provisions of (d)(1), above are being violated to the extent that the condition of the land constitutes a public nuisance, it may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and the actual costs of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties.

SECTION 7H – RURAL SITING PRINCIPLES

1. Standards for Land Development

The following standards shall apply to the siting of all uses and structures that are in Open Space Designs or subject to site plan or special permit approval. They are recommended but not required for the siting of individual residences on existing lots where no site plan or special permit review is required.

- a. Wherever feasible, retain and reuse existing old farm/woods roads and lanes rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls or where an existing road is aligned in a way that disrupts drainage or accelerates erosion.)
- b. Preserve stone walls and hedgerows. These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.
- c. Avoid placing buildings in the middle of open fields. Place them either at the edges of fields or in wooded areas. Septic systems, leach fields, and wells may be located in fields, however.
- d. Use existing vegetation and topography to buffer and screen new buildings if possible, unless they are designed and located close to the road in the manner historically found in the Town. If vegetative buffers are used, a minimum depth of 50 feet of mixed ground-covers, shrubs, and trees should be provided. Group buildings in clusters or tuck them behind tree lines or knolls rather than spreading them out across the landscape in a "sprawl" pattern.
- e. Minimize clearing of vegetation at the edge of the road, clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Use curves in the driveway to increase the screening of buildings.
- f. Site buildings so that they do not protrude above treetops and crest lines of hills as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, open up views by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing large areas or removing mature trees.
- g. Minimize crossing of steep slopes with roads and driveways. When building on slopes, take advantage of the topography by building multi-level structures with entrances on more than one level (e.g., walk-out basements, garages under

buildings), rather than grading the entire site flat. Use the flattest portions of the site for subsurface sewage disposal systems and parking areas.

h. Where feasible, site buildings and other areas to be developed in a manner that does not block trails or paths that have traditionally provided access to back land. This provision shall not be construed to create any public access rights that do not otherwise exist.

DRAFT

New Salem proposed changes to Zoning Bylaw Section 11A to make it compatible with the proposed Section 7G

To make New Salem's Site Plan Review Section compatible with the proposed Open Space Design Section 7G, the following 2 lines, underlined below (11A.2.d. and 11A. AppendixA.28), would be added to Section 11A:

SECTION 11A: SITE PLAN REVIEW

2. Projects Requiring Site Plan Review

- d. Non-subdivision open space design projects under Section 7G(1)(c) of this zoning bylaw.**

APPENDIX A

SITE PLAN CONTENTS

28. In the case of a non-subdivision application for an open space design project under Section 7G(1)(c) of this zoning bylaw, a conservation analysis under Section XII(F) of the Subdivision Rules and Regulations.